

1988

Thomas A. Henretty, Cecil L. and Ann V. Buzzo,
Carol D. Maynes, and Rosedith Nielsen v. Manti
City Corporation : Petition for Rehearing

Utah Supreme Court

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Glen J. Ellis; Attorney for Appellee.

Paul R. Frischknecht; Attorney for Appellant.

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BRIEF

880434

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IN THE SUPREME COURT OF THE STATE OF UTAH

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THOMAS A. HENRETTY, CECIL L.
and ANN V. BUZZO, CAROL D.
MAYNES, and ROSEDITH NIELSEN,

No. 880434

Plaintiffs and Appellees,

vs.

MANTI CITY CORPORATION,

Defendant and Appellant.

PETITION FOR REHEARING:

PAUL R. FRI SCHKNECHT,
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FILED

FEB 25 1990

Clerk, St.

IN THE SUPREME COURT OF THE STATE OF UTAH

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THOMAS A. HENRETTY, CECIL L.
and ANN V. BUZZO, CAROL D.
MAYNES, and ROSEDITH NIELSEN,

No.880434

Plaintiffs and Appellees,

vs.

MANTI CITY CORPORATION,

Defendant and Appellant.

PETITION FOR REHEARING;

Come now the Appellees, by and thru counsel, and as permitted by Rule 35, Rules of the Utah Supreme Court, and within the 14 days allowed, Petition this Court for a rehearing on the above matter, which was decided February 9, 1990.

The Court admits, (which the trial court did not), that had the LDS Church property not been included, that jurisdiction did not lie for creation for the district.

The Opinion errs however, on one crucial point. The undersigned did file a timely notice of cross appeal.

A copy of that notice is attached.

As pointed out in 10-16-28 UCA, and quoted in the opinion on page 10, the only grounds for setting aside a special improvement district, is that the error or irregularity goes to the equity or justice of the assessment or proceeding.

In this case, private property owners, who managed quite nicely for many years with a street having 24 feet of hard surfacing, are being forced to finance the construction of an 80 foot wide parking lot, (including removing and replacing the already existing blacktop) for the sole convenience of the

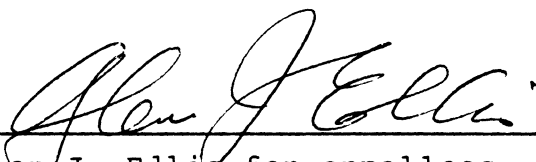
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public property across the street. These are mostly elderly, poor people, whose assessments have exceeded \$7,000. per lot, a sum which will probably force them to sell their homes, to pay the assessment.

They receive no benefit, the new parking lot is a nuisance to the private property owners, who, when there is a function, like a ball game, graduation, etc. at one or another of the public facilities, cannot even get in to their own property, except by fighting the crowds of people now parking in front of their homes.


The opinion, which bends over backwards to invalidate plain, easy to understand legislative requirements, deprives the appellees of their hard fought victory, and makes them expend even more money than they already have, on a false claim that they did not dot all the i's and cross all the t's. This is justice?

Respectfully submitted, this 20th of February, 1990.


Glen J. Ellis for appellees

NOTICE OF MAILING:

Mailed ten copies of the foregoing to the Clerk of the Supreme Court, Utah State Capitol Building, SLC, Ut 84114 , and four copies to Paul Frischknecht, Manti City Attorney, 50 South Main, Manti, Utah 84642, postage prepaid by U.S. Mail, this 20th of February, 1990.



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IN THE SUPREME COURT
STATE OF UTAH

11 THOMAS A. HENRETTY, et al,)
12)
13 Plaintiffs,) NOTICE OF INTENT TO FILE
14 VS.) COUNTER-APPEAL
15) Sanpete County Case #9386
16)
17 MANTI CITY CORPORATION,)
18)
19 Defendant.) Supreme Court No. 880434
20)
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28)

21 The Defendant, Manti City, has filed a Notice of Appeal from a partial summary judgment entered in the above case.

22 The Plaintiff, in the case, has filed a motion to dismiss for lack of jurisdiction on the grounds that the judgment issued is not a final judgment and the undersigned firmly believes that the motion is well taken and that the appeal should be dismissed for lack of jurisdiction.

23 In the event, however, that the court disagrees notice is hereby given that the Plaintiff intends to file a cross-appeal. The purpose of the cross-appeal is to test the validity of the lower court's ruling that the Plaintiff's objection to a special improvement district based on improperly counting exempt entities such as the L.D.S. Church, and the L.D.S. Church Seminary, in its calculations of property ownership for purpose of assessment.

The lower court granted the Plaintiff's motion for partial summary judgment on other grounds, but the undersigned believes that the court erred in not granting the judgment on both grounds and that if an appeal is necessary and is timely made after final disposition in the court below of the remaining issues that the Plaintiff should be allowed to have its counter-appeal heard at the same time.

The undersigned considers that the motion to dismiss on jurisdictional grounds would suspend the time for filing the counter-appeal until the court has ruled on that issue.

Respectfully submitted, this 24 day of October, 1988.

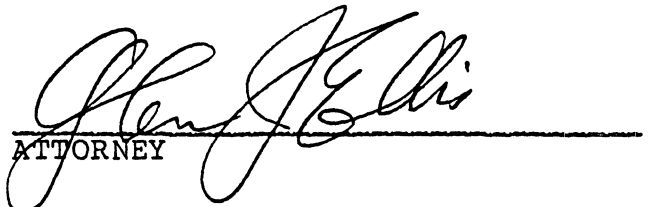

GLEN J. ELLIS

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing NOTICE OF INTENT TO FILE COUNTER-APPEAL to :

PAUL R. FRISCHKNECHT
50 North Main Street
Manti, Utah 84642

by depositing the copies of the same into the United States Mail, postage prepaid, this 24 day of October, 1988.


ATTORNEY